



How to Start a Divorce with Children in Minnesota

Need one-on-one help?

Some courts have self-help staff or volunteer attorney programs to help explain forms and procedures. To see if your Minnesota court has this service, go to www.mncourts.gov/selfhelp or ask your court administration. If this service is available, or if you want to ask a lawyer for advice, do that before you serve and file your papers. You can ask a lawyer to review papers and give you advice without hiring the lawyer to handle everything for you. Legal advice can prevent problems and save you money over time.

Follow these Steps:

1. Check the forms I-CAN! printed for you.

You should have these forms:

- *Summons*
- *Petition for Dissolution of Marriage*
- *Affidavit of Personal Service*
- *Admission of Service*
- *Form 11.1 Confidential Information Form*
- *Form 11.2 Sealed Financial Source Documents*
- *Financial Affidavit*
- *Certificate of Representation and Parties*

If you answered “yes” to a question in I-CAN! that you, your spouse or your children get public assistance from the State of Minnesota, you will also print the:

- *Notice to County Support and Collections*

2. Make sure everything on your forms is correct.

You may have made errors when entering information into I-CAN!, or the computer program may have made an error. It's very important to check your forms carefully. If you need to change something, go back to I-CAN! to add missing information or fix mistakes. Then print your forms again. You may use white-out correction fluid and print neatly to fix a small mistake, but any change you make with white-out will not be saved in I-CAN! to use in forms you need later.

IMPORTANT UPDATE: Please read through your court forms and look for any partial account numbers. These could be financial account numbers, retirement, or life insurance account numbers. If you have partial account numbers, put these on *Form 11.1 Confidential Information Form* below the social security numbers. For example, write the name of the bank/financial Institution, the last 4 digits of the account number, and the name of the person who owns the account on *Form 11.1 Confidential Information Form*. Then completely black out all partial account numbers on your other court documents. The partial numbers should be visible on *Form 11.1 Confidential Information Form* only. To black out the numbers, use a marker, dark pen, or “white out”. We are working on updating the I-CAN! program to eliminate partial account numbers from the documents, but until then, please black them out.

3. Sign your *Petition* and *Financial Affidavit* in front of a Notary or court administrator.

Your *Petition* and *Financial Affidavit* forms **must be notarized**, so you must sign it in front of a Notary or court administrator. You must present a photo I.D., like a driver's license or Minnesota ID card.

4. Make copies.

Make 2 copies of your signed original *Summons*, *Petition* and *Financial Affidavit* (with attached proof of income.) One copy is for you; the other copy is for your spouse.

☐ **CHECKLIST:**

Before you serve your documents on your spouse...

Summons:

- ☐ Did you describe all real estate owned by you or your spouse?
- ☐ Did you get the official "legal description" of the property from the deed or county recorder's office?
- ☐ Did you sign the *Summons* and include your address?

Petition:

- ☐ Did you read your *Petition* carefully and make sure that all information is correct?
- ☐ Did you ask a lawyer for help with anything you don't understand?
- ☐ Have you listed **ALL** property and debts that you and your spouse own/owe together and separately?
- ☐ Did you sign the *Petition* and have your signature **notarized**?
- ☐ Did you **attach documents** required with the *Petition* if relevant to your case?
 - ✓ copy of current child support order for joint children
 - ✓ copy of current QFP or Harassment order involving the spouses or children
 - ✓ **certified copy** of "Recognition of Parentage" form for non-joint child born during the marriage
 - ✓ **certified copy** of "Husband's Non-Paternity Statement" for non-joint child born during marriage
 - ✓ copy of income tax Schedule C if Petitioner is self-employed
 - ✓ copy of spouse's income tax Schedule C if spouse is self-employed (if available)
 - ✓ letter from child care provider with child care cost
 - ✓ copy of Affidavit of Service of Felony Name Change Notice (if you were convicted of a felony and now want to change your name in the divorce process)

Financial Affidavit:

- ☐ Did you enter your **MONTHLY** earnings?
- ☐ Did you **attach proof of your income** to the *Financial Affidavit*, like 3 months of pay stubs or your income tax returns? **IMPORTANT:** I-CAN! printed *Form 11.2 Sealed Financial Source Documents* that you must file with the court along with your *Financial Affidavit* and attached proof of income, so the public cannot view your personal financial documents in the court file.
- ☐ Did you get help if you did not understand what you to put in the blanks on the *Financial Affidavit*?

5. Serve your *Summons*, *Petition* and *Financial Affidavit* (with attached proof of income) on your Spouse.

Another adult (not you) must serve a copy of your *Summons*, *Petition* and *Financial Affidavit* on your spouse. This is what starts the divorce under Minnesota law. See the section below called “**How to Serve Your *Summons*, *Petition* and *Financial Affidavit*.**”

6. File your original divorce forms with the court.

You must file your **original** divorce forms (not photocopies) at the courthouse in the Minnesota county where you or your spouse lives. The clerk will take your forms, collect a filing fee, and assign a number to your case. Filing fees vary by county. You can file by mail or in person. It is best to take the papers to the courthouse to file them, in case there are any problems or other requirements.

Low Income? People who want to file for divorce must pay a filing fee to the court. The court clerk cannot accept your papers unless you pay the filing fee OR you have an order from a judge waiving the fee. If you can't afford the filing fee, you can fill out another form called a *Fee Waiver* (also called *In Forma Pauperis*). A judge must review that form and decide if you qualify for a free filing. You can use I-CAN! to fill out a *Fee Waiver* form. Forms are also available from court administration. Your court administration can tell you how to present your fee waiver request to the judge. If the judge denies your request, you must pay the filing fee.

Take your **originals** of the forms below and the filing fee to the courthouse (keep a copy of each form for yourself):

- *Summons*
- *Petition*
- *Form 11.1 Confidential Information Form*
- *Financial Affidavit*
- *Form 11.2 Sealed Financial Source Documents*
- *Certificate of Representation*
- *Affidavit of Service* (shows papers were served) OR *Admission of Service* signed by your spouse
- *Notice to County Support & Collections* and the *Affidavit of Mailing or Delivery* (File these 2 forms ONLY if you, your spouse or children have applied for public assistance or receive it now.)
- *Fee Waiver Order* (if you asked for and received a fee waiver.)

7. Wait up to 30-days for your spouse to respond to your *Petition*.

After your spouse is served with your *Summons*, *Petition* and *Financial Affidavit* he or she has **30 days** to serve you with papers called *Answer and Counter-Petition* and a *Financial Affidavit*. If you get a written *Answer* from your spouse, it means that he or she probably disagrees with one or more of the requests in your *Petition*.

OR, instead of serving you with an *Answer*, your spouse might do nothing. In that case, **31 days** after your spouse was served with your *Summons*, *Petition* and *Financial Affidavit*, you can file a couple other forms with the court to complete the divorce. For more details on this option, see the section below called “**How to Finish the Divorce Process.**”

OR, your spouse may contact you and say he or she agrees with all or most of your requests. If you can reach an agreement on dividing your property and debts and caring for your children, you can

prepare a form called *Stipulated Findings of Fact, Conclusions of Law, Order for Judgment, and Judgment and Decree* and ask the judge to approve it. You and your spouse must sign the *Stipulated Findings* in front of a notary. For more details on this option, see the section below called “**How to Finish the Divorce Process.**”

8. Calculate child support.

In a divorce with children, the judge must make orders about child support. In your papers, you must tell the judge what your agreement for support is if you have one, or you tell the judge the amount of support you want ordered. When you go back to I-CAN! to create the forms to finish your divorce, you will be asked about child support. Learn how to figure out your child support in the instruction printed from I-CAN! titled “**How to Calculate Child Support in Minnesota.**”

9. Go back to I-CAN! to create papers needed to finish your divorce.

To create your final divorce forms, you must have your I-CAN! username and password, Worksheets from the Child Support Calculator, and the date your spouse was served. With this information, I-CAN! will create the rest of the forms you need and tell you what to do with those forms. For further information, read the section below called “**How to Finish the Divorce Process.**”

How to Serve Your *Summons, Petition and Financial Affidavit*

Before you file your forms with the court...

Someone (not you) must serve a **copy** of your *Summons, Petition and Financial Affidavit* (with attached proof of income) on your spouse. The person who serves must hand-deliver the papers to your spouse. This can be done anywhere, as long as the person hands the papers directly to your spouse. The person who serves must be 18 years of age or older AND must not be involved in your case (a friend can serve your papers for you.)

WARNING! The server must **NOT**:

- leave the forms at your spouse’s house,
- leave the forms with someone else,
- mail the forms, OR
- serve the forms on a legal holiday.

After the server hands the forms to your spouse, the server must fill out the *Affidavit of Personal Service* form that you printed from I-CAN!. The server signs the *Affidavit of Personal Service* in front of a Notary or court administrator and gives it to you. You file the notarized *Affidavit of Personal Service* with the court along with your other divorce forms. You do not have to give a copy of that service form to your spouse. (See **STEP 6** above.)

For a fee, the Sheriff or a “process server” will serve legal papers. If a judge signed a *Fee Waiver* order for you and it includes service fees, the sheriff’s fee can be paid by the court.

FAQs about “service of process”

Q: I-CAN! printed an *Admission of Service* form. What is that?

A: You do not need another adult to hand-deliver your papers IF your spouse is willing to sign an *Admission of Service* in front of a Notary. You can simply mail or give the *Admission of Service* to your spouse, along with a copy of your *Summons, Petition and Financial Affidavit*. After signing the *Admission of Service* in front of a Notary, your spouse gives that form back to you so that you can file it with the court. **NOTE:** Your spouse’s signature on the form must be notarized.

Q: What if I cannot find my spouse?

A: You can ask the court for permission to serve by “alternate means.” Learn about service by alternate means on our website at www.mncourts.gov/forms. Click the category “**Divorce/Dissolution**” and then click the forms packet called “**Service by Alternate Means.**” Carefully read the Instructions at #DIV1301.

Q: What if my spouse is not in the United States?

A: Serving someone who is in another country is not easy. The court cannot tell you what to do. Talk to a lawyer.

How to Finish the Divorce Process

Q: What if you need help with custody or financial support right now?

A: You can ask the court for temporary orders for financial support, parenting time, custody or other urgent needs. Learn how to ask for a temporary order by getting the forms packet called “**Temporary Relief with Children**” at your courthouse, or download it at www.mncourts.gov/forms. Choose the forms category “**Divorce/Dissolution**” and then select the forms packet for “**Temporary Relief with Children**.”

Hennepin County: For divorce cases in **Hennepin County District Court**, you must go to your “Initial Case Management Conference” before you can ask for temporary orders.

Q: How long does my spouse have to respond to my divorce papers?

A: If your spouse disagrees with something in your *Petition*, he or she has **30 days** after being served with your papers to serve you with a written *Answer and Counter-Petition* and *Financial Affidavit* to avoid being in “default.”

Q: What if my spouse doesn’t answer within 30 days?

A: If your spouse does not answer within 30 days of being served with your *Summons*, *Petition* and *Financial Affidavit* and you do not have an Agreement, he or she is in “**default**.” You can still go forward with your divorce and ask the Court to order what you requested in your *Petition*. After the 30 days have passed, go back to I-CAN!, select “**Phase 2**” and enter your username and password to create your final forms. I-CAN! will print instructions on how to finish your divorce by “default” along with your final forms.

Q: What if my spouse sends me an informal answer or letter?

A: If your spouse gives you an “informal” answer within 30 days of the date you served your *Summons*, *Petition* and *Financial Affidavit*, you must fill out and serve another form called *Notice of Intent to Proceed to Judgment*. You can get this form at the courthouse or download it from the court’s website at www.mncourts.gov/forms. Click the category “**Divorce/Dissolution**” and then click **Form #DIV812**. If your spouse sends you an *Answer and Counter-Petition* after receiving your *Notice of Intent to Proceed to Judgment*, then you should talk to a lawyer.

Q: What if my spouse serves me with an *Answer and Counter-petition*? **A:**

You should do the following:

- Carefully read the *Answer and Counter-Petition*. That document tells you the items in your *Petition* that your spouse agrees with and where you disagree.
- Once you know the issues where you disagree, it is usually best if you try to reach an agreement regarding those issues. Your court might have mediators or other resources to help you reach a fair agreement. If you do not feel safe with your spouse, do not try to reach an agreement on your own. Get help from a lawyer, advocate, or other person. Do not make agreements with your spouse just to “get it over with.” You should talk with a lawyer before you sign any agreement. Decisions you make now can seriously impact your finances and the lives of your children.
- If you reach an agreement, I-CAN! will help you create the *Stipulated Findings of Fact*, *Conclusions of Law*, *Order for Judgment*, and *Judgment and Decree* form needed to finish your divorce. For more details, read the section below called “**What if my spouse and I agree on everything?**”
- During the divorce process, carefully read any letters or Orders you get from the court. You should follow all instructions in the letters. If you have any questions, ask a lawyer or your court administrator.

Contested Case: If you and your spouse do not agree, then your case is “**contested**.” In contested cases, the judge makes the final decisions about dividing property and debt and about custody and child support. Contested cases involve many more steps, court hearings, and other requirements. I-CAN! does not explain how to handle a contested divorce. You should talk to a lawyer.

Q: What if my spouse and I agree on everything?

A: If your spouse agrees with your *Petition*, or you can reach an agreement on all of the issues, you and your spouse can sign a *Stipulated Findings of Fact, Conclusions of Law, Order for Judgment, Judgment and Decree* (“*Stipulation*”). Use I-CAN! to create your “*Stipulation*” and the other forms needed to finish your divorce.

Go back to I-CAN! and start “**Phase 2**” by entering the username and password you got for Phase 1. Answer the questions on how you served your spouse with the *Summons* and *Petition*. Answer “yes” to having an Agreement. I-CAN! will then take you through questions answered during Phase 1 to fill in any remaining blanks and to update answers where you said “I don’t know.”

Stipulation and “I don’t know” answers: When you first entered information into I-CAN! to create your *Petition*, you might have answered “**I don’t know**” for some questions about your spouse. Since both you and your spouse will sign the “*Stipulation*”, you must include detailed information in the “*Stipulation*” about your spouse that was missing in your *Petition*. Look at your *Petition* to see what you left blank or didn’t know, and have that information with you when you return to I-CAN! to create your “*Stipulation*”.

When you return to I-CAN! to finish your divorce, you will be asked questions about child support. Read the I-CAN! instructions that printed with your *Petition* called “**How to Calculate Child Support in Minnesota with ‘Income Shares.’**” You and your spouse should use the online Child Support Calculator to get the amounts of child support to be paid. You should print the “Worksheets” from the Calculator so you can use them when you return to I-CAN!.

When you return to I-CAN! to finish your divorce, you can also review and change requests you made in your *Petition*. For example, you may have asked for “reasonable parenting time” in your *Petition*, but now you and your spouse may want a specific parenting time schedule in the “*Stipulation*”. You can make such changes in I-CAN! when you return to the program and select the Agreement option.

Q: What is required for Child Support?

A: In a divorce with children, the law requires the judge to make an order about child support. Child support is based on the incomes of both parents and other factors. If you have information about your spouse’s finances, use the online Child Support Calculator at <http://childsupportcalculator.dhs.state.mn.us>.

Carefully read the instructions for the online Calculator and print the “**Worksheets**” from the **Calculator** after you have entered your data. Attach a copy of the “Worksheets” to your final divorce papers so the judge can review them.

The judge must order the dollar amounts of child support from the online Calculator, unless you have legal arguments that justify a lower or higher amount. For more information on child support, talk to a lawyer, contact your County Child Support Office, or go to www.mncourts.gov/selfhelp.

Child Support in a Default Case: If your spouse has not served you with an *Answer* (is in default) and you do not have the necessary information about your spouse’s income to use the Child Support Calculator, then you should ask for help from a lawyer or the county Child Support Office to figure out the amount of child support to request in your divorce. For a small one-time fee, your county Child Support Office will help you enforce or modify your order and collect the payments. We strongly recommend that people use that service.

Q: When is my divorce final?

A: Your divorce is not final until:

- You file all required court forms;
- You attend any court-ordered hearings, classes, or programs;
- The judge signs your divorce papers; AND
- The court administrator “enters” the judgment and sends you a written notice that the divorce is final.

Q: What if I move or my spouse moves?

A: If you move (or your spouse moves) before your divorce is final, you must give the new address and phone number to your court administrator right away. If you do not, your divorce could be delayed or dismissed.

Q: I got a letter from the Court, what do I do?

A: Carefully read all letters and Orders from the court. You must do what the letter or Order tells you to do. You may need to attend a hearing, meeting or program, or file other papers. If you do not understand what the letter says, ask your court administrator or a lawyer to explain it. If you need an interpreter, tell your court administrator.